

SUBJECT: County approval of Water Quality Board Regulations

COMMITTEE: Natural Resources

VOTE: 6 ayes: Craddick, Peveto, Cain\*, Coleman\*, Looney, Rudd\*

0 nays

0 present, not voting

5 absent: Close\*, Berlanga\*, Massey, Miller\*, Simpson\*

WITNESSES: FOR: None

AGAINST: Troy Webb, Director of Environmental Protection Division, Attorney General's office;  
Glenn Hartman, City Councilperson, City of San Antonio;  
Rowena Rodgers, League of Women Voters

DIGEST: The Texas Water Quality Board has the authority to regulate water quality standards in Texas. The board may issue orders, rules and regulations to prevent the pollution of water.

Under this bill, if the board issues an order which affects all or part of more than one county, the order does not become effective in any county until formally adopted by the county commissioners court or for 60 days, whichever comes first. (Under either alternative, notice, the order goes into effect; counties can delay, but not block it.)

If the order affects only one county, it becomes effective as determined by the board.

PRO: This bill gives counties a chance to review the orders which effect more than one county. However, because of the importance of maintaining water quality in the state, the orders will go into effect, even if not approved. A county should not be able to opt out of multi-county orders regarding water quality. Lakes and rivers are rarely contained within one county. If a county can veto an order of the board and dump pollutants in a lake, the lake will be polluted for all counties in which it is contained.

CON: This bill gives absolutely no review to the counties affected by board orders. The provision which allows counties to adopt the orders before they become effective is a worthless gift. Even if the counties refuse to approve them, the orders go into effect. There should be more local control over local pollution problems.

COMMENTARY: The Administrative Procedures Act states that rule changes adopted by agencies go into effect 30 days after being published in the Texas Register. It is not clear whether the 60 day delay provision in this bill is intended as an amendment to that act.

As reported from committee, the bill can be interpreted to mean a Water Quality board order will become effective regardless of whether the county commissioners approve the order. If this interpretation is correct, the bill will really not change current procedures, only delay the effective date of the order. It's possible the author will try to defeat the committee amendment or substitute his own amendment on the

floor, so that the bill more closely resembles its introduced version. With this possibility in mind, an analysis of the original bill follows:

DIGEST: As originally introduced, the bill provides that orders of the board will not become effective until approved by the commissioners court of the affected counties. Single county orders will take effect without approval.

PRO: This bill will give counties a chance to help manage their own water quality standards. If a county feels an order of the board is not appropriate for that county, the commissioners court can opt out of the order by not approving it. If the board then decides the county shouldn't opt out, it can adopt another order which applies only to that county and is identical to the order the county vetoed. The board's powers are really not diminished. But a county has at least a chance for a hearing before the board to explain why it is in an exceptional position. Opponents of this bill assume the counties are in favor of pollution. This is ridiculous. The counties are in favor of more local control over the decisions which directly affect them. The situation of counties over the recharge zone of the Edwards aquifer is a perfect example. Kinney county is in this zone. It has only a handful of residents. It doesn't make sense to require them to have vacuum street sweepers and special fertilizers like counties with 1,000 people per square mile.

CON: A body of water such as a lake, does not always follow political boundaries. Water pollution does not end at the borders of the county. The rationale behind this bill doesn't make sense. You can't have an effective program on a county-by-county basis. The Edwards aquifer and Lake Livingston are both perfect examples. These bodies of water are located in rural counties. If a few counties vetoed anti-pollution orders adopted by the board, the entire body of water would be polluted. These lakes are the primary water supplies for millions of people in Houston and San Antonio. The actions taken by the rural counties could contaminate their water supplies and the victims could do nothing about it. The purpose of the Water Quality Board is to protect the quality of water in the state. To give individual counties veto power over board orders makes absolutely no sense.

The board already has the authority to take care of unique situations. In any one order the board writes they can take care of special conditions in a particular county if the board has facts which justify special treatment. To permit one county to avoid regulation that applies to other counties without reasonable justification is unconstitutional as a denial of equal protection. If the counties are not getting a fair hearing, the board should hold meetings in every affected county.

The important thing to keep in mind is that water quality and pollution control are not local issues. Water pollution flows with the water. It doesn't stop at the county line. Many of our cities get their water from surface and underground lakes in rural counties. The decision on cleanliness of water belongs to all the people, not just a few.